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No. 83-1544

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

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MURIEL SIEBERT, SIEBERT FOR SENATE,  
WHITNEY NORTH SEYMOUR, JR., and  
SEYMOUR SENATE CAMPAIGN COMMITTEE,  
*Petitioners,*

vs.

THE CONSERVATIVE PARTY OF NEW YORK  
STATE, NEW YORK STATE CONSERVATIVE PARTY  
STATE COMMITTEE, J. DANIEL MAHONEY,  
MICHAEL R. LONG, SERPHIM R. MALTESE  
and JAMES E. O'DOHERTY,  
*Respondents.*

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On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Second Circuit

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MOTION FOR  
LEAVE TO FILE BRIEF AMICUS CURIAE  
OF CENTER FOR RESPONSIVE POLITICS  
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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WILLIAM C. OLDAKER  
EPSTEIN, BECKER, BORSODY  
& GREEN  
1140 Nineteenth St., N.W.  
Washington, D.C. 20036  
(202) 861-0900

*Counsel for Center for  
Responsive Politics*

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The Center for Responsive Politics moves for leave to file the attached brief amicus curiae in support of the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Although petitioners have consented to our filing a brief as *amicus*, we have not been able to affirmatively contact respondents for their consent to do so, and this motion is therefore necessary.

The Center for Responsive Politics is a bi-partisan national research organization directly concerned with issues of campaign finance. We view the Second Circuit opinion in this case as having wide impact on the indirect financing of future Congressional elections, as more and more candidates are tempted to use the special Political Party non-profit subsidized mail rate for campaign purposes in the belief that there is not likely to be any meaningful enforcement action, since the opposition has no standing to prevent such mailings.

The risk that payment of additional postage might be required from a potentially insolvent campaign committee at some future date is a calculated risk well worth taking during a hotly contested campaign when the bird in hand of a mass mailing at nominal postage is so easily obtainable.

We believe that the public interest requires these considerations to be brought to the attention of the Court, and accordingly request leave to submit the annexed brief.

### CONCLUSION

Accordingly, this Motion for Leave to File Brief *Amicus Curiae* in Support of Petition for Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM C. OLDAKER  
EPSTEIN, BECKER, BORSODY  
& GREEN

1140 Nineteenth Street, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 861-0900

*Counsel for Center for  
Responsive Politics*

April 9, 1984

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BRIEF AMICUS CURIAE OF CENTER FOR RESPONSIVE  
POLITICS IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI

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## INTEREST OF AMICUS CURIAE

The Center for Responsive Politics is a non-profit bipartisan organization founded in January 1983, primarily concerned with campaign finance reform.

It is our belief that this case raises crucial issues involving the impact of new technologies in political campaigns and the role of money in the political process.

The funding of Congressional election campaigns has become a national disgrace.

The amount of money involved, the compulsive and extravagant efforts required to raise it, and the escalating role of special interest contributors not only thwart the central purpose of political campaigns but threaten the integrity of candidates and the integrity of the governing process, itself.

After ten years of exponential growth, combined spending for national, state and local elections now eclipses the billion dollar mark.

Today, it is not unusual for a state house candidate to spend what it once cost to run for Congress. Nor is it unheard of for Congressional candidates to run up campaign bills of \$1 million to \$2 million, as some did in 1982, or Senate candidates to spend \$6 million to \$7 million.

One set of figures is especially revealing: In 1974, all of the candidates for the U.S. House and Senate spent a total of \$77 million on their campaigns. By 1982 that figure had jumped to \$343 million—an increase of nearly 500 percent.

Two major influences are behind this trend. Over the last decade, many new, highly sophisticated, very effective, and extremely costly campaign "tools" have been developed. Computers, direct mail, polling services, research teams, media consultants and image-makers have taken the place of the whistle-stop appearance, the stump speech and the press hand-out that were the standard, and often the only devices used in the campaigns of yesteryear.

Without the new campaign "tools" candidates and parties find themselves at a marked disadvantage. As a result, political adversaries lock themselves into an escalating "money race" that is not unlike the arms race. Money parity is not enough. Superiority is the goal.

The endless "raise and spend" race can subvert the central purpose of political campaigns in several ways. Besieged by the voracious money demands of a campaign, candidates spend less and less time addressing the issues and the electorate and more and more time soliciting contributions. Furthermore, the campaign money burden tends to discourage the candidacy of qualified persons of modest means, while encouraging the entry of those who may or may not be qualified but have substantial money of their own—or less qualms about sources from whom they hope to get it.

The goal of the Center for Responsive Politics is to help reverse this trend and restore probity and sanity to campaign financing of Congressional and Senate races.

## ARGUMENT

This is a clear case where one candidate has been enabled to utilize the new technique of computerized direct mail and to finance a mass mailing in large part by circumventing the normal requirements of paying customary postage charges.

The salient facts, as we view them, are these: 1. The law allows a Party Committee to mail material at a special non-profit rate while candidates are prohibited from using this low rate (see Section 3624(e) of Title 39 of the U.S. Code); 2. Party Committees are allowed to contribute a limited amount of funds or in-kind services to a political candidate (\$5,000 in a primary election); 3. The candidate for the Senate in New York in 1982, Florence Sullivan, sent a mailing to approximately a half a million primary voters; 4. The mailing was paid for by the Sullivan for Senate campaign but the campaign used the special non-profit rate the law restricts for political parties; 5. The disclaimer on the mailing stated that the printing of the brochure

was paid for by the Conservative Party (according to FEC Reports this was an in-kind contribution of \$4,980); 6. The return address on the mailing was the New York State Conservative Party, 1982 Victory Fund, 45 East 29th Street, New York, New York 10016, implying that this was a Conservative Party "mailing".

The only reasonable conclusion that can be drawn from the facts is: the Sullivan for Senate Campaign wilfully and deliberately mailed campaign literature, the sole purpose of which was to influence voters in the New York primary, under a special rate that was only legally allowed for Political Party use. This was done with the knowledge and cooperation of the Conservative Party yet paid for by the campaign of Mrs. Sullivan. The mailing was not a Party mailing and thus was not entitled to the special rate. It should have been mailed under the regular first class stamp or under the bulk rate available to all other political candidates.

There are two fundamental public policy issues that this case highlights:

First, given the fact that direct mail is a new, important communications tool in modern American campaigns, what are the future implications of a candidate improperly taking advantage of a direct subsidy from a political party, over and above the contribution limit? If there are no effective controls, the subterfuge employed here can be multiplied hundreds of times over. Subsidized mailings can be used for national fundraising drives as well as mass campaign mailings to voters general elections.

Second, the purpose of the law allowing political parties to mail at the cheapest rate possible was expressly designed to strengthen the political system: Is this effort to strengthen the parties to be replaced by one permitting certain political candidates to take advantage of the reduced, non-profit rates while others cannot — thereby *undermining* the political system?

Given the ever-increasing use of direct mail and the tremendous cost of postage, the decision of the Second Circuit can only result in encouraging more candidates to find ways to send out their mailings under the special Party rate. We believe that this should not be done.

Look at the situation that most candidates for federal office find themselves in. According to our analysis of spending for political office, it now costs \$212,000 to run for an average House of Representatives seat. This is up from \$52,000 in 1974. The Senate figures are even more startling—the cost has risen from \$423,000 in 1974 to \$1,732,000 in 1982.

What these figures show is that the cost of communicating with voters has risen to such a point that television, radio and direct mail have become the be-all and end-all of a campaign.

Direct mail is extremely important not only as a communications tool but also as a means for fundraising. With most direct mail letters the purpose is both to influence the voter and to raise funds. Therefore, the approximately 5 cents a letter that is saved between bulk rate postage and the non-profit rate can mean an indirect gift of hundreds of thousands of dollars to a Senate candidate.

The money saved on postage can be used for electronic media—or even to send out more direct mail. The important advantages that this gives a candidate should not be underestimated.

If future candidates read the Second Circuit decision as a stamp of approval to piggyback their direct mailings on a political party's cut-rate mailing cost with no risk of serious enforcement, then a great disservice has been done to the political process. There will in all likelihood be a rush of candidates attempting to duplicate Mrs. Sullivan's postage subsidy. It is even possible that certain candidates or special interest groups will seek to create their own "political parties" so that they can take advantage of the reduced rates. The hundreds of thousands of dollars of postage savings could have a major impact on a candidate's overall campaign budget.



The implications for the future are indeed serious. If this sort of activity is allowed to continue, the legal limitations on what parties can provide for candidates can easily be disregarded. In short, if this court fails to overturn the lower court's decision here, it will send signals that the election laws can easily be circumvented and that the postal services subsidies are ripe for the picking.

It is up to interested organizations and opposition candidates to point up violations that occur so that there are not "repeat performances".

The U.S. Postal Service, being subject to Congressional oversight, will understandably be reluctant to cause offense to Congressional candidates by inquiring into the propriety of their non-profit mailings. The suggestion that USPS is the *only* entity which can take enforcement action makes the limitations in the statute to Party purposes truly a "dead letter".

## CONCLUSION

There are vital public policy issues involved in this case. The future of the political process will be directly affected by the ability of candidates to get away with violations of the sort represented by the 1982 New York Senate primary campaign. The Center for Responsive politics respectfully urges the Court to grant the petition.

WILLIAM C. OLDAKER  
EPSTEIN, BECKER, BORSODY  
& GREEN  
1140 Nineteenth Street, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 861-0900  
*Counsel for Center for  
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